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RL:0296

Proposals 411, 416, 489, and 581 RELATING TO CONSERVATION AND OTHER LANDS

Statement for
Con Con Committee on Environment, Agriculture,
Conservation and Land Committee
Public Hearing 7 August 1978

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Proposals 411, 416, 489, and 581 would, in common, provide for the protection of conservation lands through constitutional amendments. Hence they are addressed together in this statement, even though the proposals for such protection differ somewhat and two of the proposals deal with other amendments than those related to conservation lands. This statement does not reflect an institutional position of the University of Hawaii.

Conservation lands

Each of the proposals would provide constitutional protection for the conservation status of certain lands. The Board of Land and Natural Resources, under its regulations, now controls uses within the Conservation Land Use District. The Land Use Commission is empowered to make boundary changes that would include additional lands in the District or remove lands from it. The introduction of these proposals strongly implies dissatisfaction with the extent of environmental protection in the conservation lands provided by these present arrangements.

In considering these proposals, the Constitutional Convention should recognize that there are alternative means, less cumbersome than the constitutional means proposed for providing additional protection to conservation lands. It would be possible, for example, to require legislative approval of boundary changes that would remove land from the the Conservation District or of regulations pertaining to that District.

Means for providing the protection in the four proposals are discussed below.

Proposal 581

In Proposal 581 the constitutional protection that would be provided would be restricted to the present forest and water reserves and any additions to them. Forest and water reserve lands make up the bulk of the Conservation Land Use District. Hence, the effect of the proposal would be essentially to assure the continuance of environmentally conservation policies within the Conservation District.

It should be recognized that the primary reasons for placement of lands in forest and water reserves are the conservation of water and of forests (not endangered species within the forests). The conservation intent of the proposal, however, is restricted to endangered flora and fauna, natural watersheds and waterways, archaeological sites, and special geologic features. Lands in the present forest and water reserves were not necessarily placed in the conservation district because of needs for protection of these specific environmental assets.

The other three proposals (411, 416, and 489) which relate to the conservation of land do not suffer from the restriction of Proposal 581. The environmental conservation concerns for protection of endangered flora and fauna, waterways and watershed, archaeological sites and special geologic features expressed in Proposal 581 might better be served by combining these concerns with one of the other three proposals (411, 416 and 489) related to conservation of land.

In general, it is inappropriate to require for cancellation of a classification of lands a procedure different from that by which the classification is applied. In making no specific provision for placement of lands within the forest and water reserves, the proposal would in essence retain the present mechanisms for such placement. Yet, under the proposal, removal of lands from these districts would require constitutional amendment. In all probability the effect would be to deter the placement of additional lands in the forest and water reserves, no matter how important the continuance of conservation might seem, in commercial forests for example, because of the difficulty of later cancellation of their forest and water reserve classification. The proposal might well be significantly counter productive, then, in terms of its intent.

Proposals 411, 416, and 489

The constitutional safeguards of environmental quality in certain lands in proposals 411, 416, and 489 are not restricted to lands in the Conservation Land Use District, but might include parks and recreational areas elsewhere, and in the case of Proposal 489, certain categories of agricultural lands. The lands in question would, in each proposal, be designated as Aina Malama. The mechanisms for placement of lands within the Aina Malama differ from proposal to proposal. In none of the three proposals would the placement of lands in the Aina Malama be automatic, and in each of the proposals the mechanisms for removal of lands from the Aina Malama would be the same as the mechanism for inclusion of lands. The mechanisms differ somewhat from proposal to proposal, but all would require approval by the majority of the votes cast statewide in an election (as in the case of a constitutional amendment but without the requirement that the number of votes cast represent 35 percent or more of the registered voters). All would also require a majority vote in the county in which a nominated piece of land is located.

In each of the proposals, an Aina Malama Commission would be established to assure that uses of the lands would be in accord with the purposes of their designation as Aina Malama.

The mechanisms for nomination in the three proposals are similar. In all, the nominations are restricted to lands already classified, or classified by other official means, as conservation lands, park or recreational areas (or in the case of Proposal 489 prime, unique, or otherwise important agricultural lands).

In none of the proposals would present designations of lands as conservation, parks, etc., be removed. The effect, then, would be to establish two classes of conservation lands, two classes of parks, etc. The provisions for changes in designation and for uses within a land now designated conservation would remain as at present unless the land were in addition designated Aina Malama, but if once so designated there would be greater restriction on either changes in designation or use. The uses of the lands would be subject to regulation by the Aina Malama Commission as well as present regulatory bodies, and a change in designation could be made only by the Aina Malama procedure as well as present procedures.

The strength of the rationale for restriction of land use to conservation, park or recreational use, etc., clearly varies from place to place. However, the probability must be recognized that, in creating subclasses of lands within which changes of designation and use become more difficult, the changes in designation and use will become in practice less difficult in lands not placed in those subclasses.

The superposition of regulatory powers of the Aina Malama Commission and those of present regulatory bodies with jurisdiction over the lands is consistent with the greater environmental control that is the clear intent of the proposals. The actual effect, however, is problematical. Unless the Aina Malama were provided with an enforcement staff, which would seem undesirably duplicative, there might be no significant effect.

It should be noted that, although the composition of the Aina Malama Commission would be somewhat different from the compositions of the Land Use Commission and the Board of Land and Natural Resources, and the appointment powers of its members would be spread more broadly, its decisions on appropriate land uses would not necessarily differ greatly from those of the present Commission and Board.

The provisions of proposal 416 are somewhat more detailed than those of the other provisions. They are thus more definitive, but some also raise more questions. For example, the proposal that Aina Malama lands may not be appropriated for utilities, roads, etc. unless additional lands of equal size and value are replaced in the Aina Malama raises at least two questions: 1) Is this proposal in conflict with the requirement that removal of lands from the Aina Malama be subject to the same procedure as applies to placement of lands within the Aina Malama? 2) From where would the added lands be drawn, and what relation would there be between the ownership of the lands to be appropriated and the lands to be added?

Standing to sue

Proposal 416 calls for one amendment to the Constitution that is distinctly different from those called for in the other three proposals considered here. The first of its sections would enlarge the standing of persons to bring legal actions to enforce the rights and principles embodied in Article X of the Constitution.

The desirability of this provision involves subjective judgments that are not within the province of the Environmental Center. We may note, however, that the enlargement of standing to sue, through statute or constitutional provisions, has not in other states resulted in the rash of environmental suits that was feared by those who opposed the provisions.